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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,503	01/30/2007	Jari Rasanen	0696-0247PUS1	6720
2292 7590 09/02/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER EDWARDS, BRETT J				
ART UNIT		PAPER NUMBER		
3781				
NOTIFICATION DATE		DELIVERY MODE		
09/02/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

# Office Action Summary

**Application No.**

10/587,503

**Applicant(s)**

RASANEN ET AL.

**Examiner**

Brett Edwards

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 7/27/2006

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Individual Patent Application
- 6) ☒ Other: Machine translation of FR 811,987



**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Response to Amendment***

The amendment to the claims filed on 7/27/2006 has been accepted. Claims 1-12 are currently pending in this application.

***Claim Objections***

2. Claim 7 is objected to because of the following informalities: Line 3 recites "in partially nested relationship with this" and should probably instead be --in partially nested relationship with the larger-sized cup--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Regarding claim 8, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Jagenberg-Werke (FR 811,957). A machine translation of this document is attached.

As to claim 1, Jagenberg-Werke discloses cup package made of a fiber-based material and comprising a cup (1) for a product to be packaged and a lid (6) for closing the mouth of the cup, characterized in that the cup package can be opened by lifting the lid off and closed by pressing the lid back, the lid is in partially nested relationship with the cup, the adhesion between the inner surface of the cup and the lid retaining the lid in position, and in that adjacent mouth rolls (11, 12) are provided at the mouth of the cup and the edge of the lid, the mouth rolls acting as grip bases when the lid is opened (Fig. 1, 2, 6; Paragraph 7 (starting with "The paper 1 container is..."), ll. 1-11 and 16-18).

As to claim 2, Jagenberg-Werke discloses a cup package as defined in claim 1, characterized in that the mantle (7) of the cup and the lid expand conically upwards, their conical surfaces lying opposite and being attached to each other.

As to claim 3, Jagenberg-Werke discloses a cup package as defined in claim 2, characterized in that friction between the inner surface of the cup and the lid retains the lid in position.

As to claim 4, Jagenberg-Werke discloses a cup package as defined in claim 2, characterized in that at least one of the opposite surfaces of the cup and the lid comprises one or more protrusions (the region marked as 'y' in Fig. 1) in order to provide attachment between the surfaces.

As to claim 5, Jagenberg-Werke discloses a cup package as defined in claim 4, characterized in that one of the opposite surfaces of the cup and the lid comprises one or more protrusions (y), the other one comprising one or more recesses (the region marked as 'z<sup>1</sup>' in Fig. 2) for receiving the protrusion in order to provide attachment between the surfaces.

As to claim 6, Jagenberg-Werke discloses a cup package as defined in claim 1, characterized in that the lid (2) has been formed by connecting a principally discoid centre and a surrounding frame (z and z<sup>1</sup> in Fig. 2) bearing against the inner surface of the cup, the frame having a mouth roll (11) at its edge.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jagenberg-Werke in view of Wanderer (US 3349941).

As to claim 7, Jagenberg-Werke discloses a cup package as defined in claim 1. Jagenberg-Werke does not expressly disclose a smaller-sized cup with a mouth roll.

However, Wanderer discloses a package which has at least three parts, comprising a lowermost larger-sized cup (12), a smaller-sized cup (14) in partially

nested relationship with the larger cup and an uppermost lid (16), each of said parts comprising a mouth roll (26, 48, 88) with vertically adjacent mouth rolls acting as grip bases when the parts are separated (Fig. 1 and 3; Col. 2, ll. 24-27 and 46-52; Col. 3, ll. 33-38; Col. 4, ll. 62-68). Wanderer discloses the two cups allows for the packaging of different foodstuffs or other products within in the same container but in different compartments (Col. 1, ll. 9-14).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the cup package taught by Jagenberg-Werke to include a smaller sized cup, as taught by Wanderer in order to allow for the packaging of different foodstuffs within the same container.

In regard to claim 8, a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). As such, the cup package taught by Jagenberg-Werke and Wanderer as defined by claim 7 is capable of being a food package, in which the larger-sized cup contains the main product and the smaller-sized cup contains trimmings.

9. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jagenberg-Werke in view of Gilmer (US 6136396).

As to claim 9, Jagenberg-Werke discloses a cup package as defined in claim 1. Jagenberg-Werke does not disclose that the cup and the lid are made of

polymer-coated board, with the polymer coating provided at least on the inner surfaces of the cup and the lid.

However, Gilmer discloses a fiber-based cup (100) with a mouth roll (120), wherein at the surfaces of the cup are coated with a polymer in order to provide the cup with desirable insulating, shock absorbing or strength to weight ratio properties (Fig. 2a-2c; Fig. 4-5b; Col. 1, ll. 19-27; Col. 3, ll. 38-46).

Therefore, at the time of invention, it would have been obvious to one of ordinary skill in the art to coat the cup and lid of the cup package taught by Jagenberg-Werke with a polymer coating, as taught by Gilmer, in order to provide the cup with desirable insulating, shock absorbing or strength to weight ratio properties.

As to claim 10, Jagenberg-Werke discloses the cup package of claim 1, wherein the cup and lid are provided with mouth rolls which are adjacent each other in the closed package and serve as grip bases as the package is opened. Jagenberg-Werke further discloses the cup is made from a rolled up blank and provided with a discoid center bottom (Most clearly seen on the cup of Fig. 6; Par. 7, ll. 1 and 2), but is silent on the particular method of manufacturing of the cup and lid.

However, Gilmer discloses a method of manufacturing a cup, wherein a cup is formed by connecting a principally discoid bottom (102) with a mantle (100) forming the sides of the cup and by equipping the mouth (118) of the cup



with a surrounding mouth roll (120) by mechanical molding of the fiber-based material (Fig. 2a-2c; Fig. 4-5b).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to use the method of taught by Gilmer as the particular manufacturing process of the cup taught by Jagenberg-Werke.

Furthermore, Gilmer does not disclose a lid is formed for closing the mouth of the cup by connecting a principally discoid centre with a sleeve-like frame and by equipping the edge of the frame with a surrounding mouth roll.

However, it would have been obvious to one of ordinary skill in the art to produce the lid taught by Jagenberg-Werke by the method taught by Gilmer since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

As to claim 11, Jagenberg-Werke and Gilmer teach the method as defined in claim 10, characterized in that mouth rolls are formed in the cup and the lid by mechanical molding of a fiber-based packaging material.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jagenberg-Werke and Gilmer as applied to claim 10 above, and further in view of Wanderer.

Jagenberg-Werke and Gilmer teach a method as defined in claim 10. Neither expressly disclose an at least three-part product package is manufactured by forming at least two partially nested cups and a lid closing the

mouth of the uppermost cup and by packaging products into the cups in mutually different quantities or qualities.

However, Wanderer discloses a package has at least three parts, comprising two partially nested cups (12, 14) and an uppermost lid (16), each of said parts comprising a mouth roll (26, 48, 88) with vertically adjacent mouth rolls acting as grip bases when the parts are separated (Fig. 1 and 3; Col. 2, ll. 24-27 and 46-52; Col. 3, ll. 33-38; Col. 4, ll. 62-68). Wanderer discloses the two cups allows for the packaging of different foodstuffs or other products within in the same container but in different compartments (Col. 1, ll. 9-14).

Therefore, at the time of invention it would have been obvious to one of ordinary skill in the art to modify the method taught by Jagenberg-Werke and Gilmer to include two partially nested cups with different products in each, as taught by Wanderer, in order to allow for the packaging of different foodstuffs within the same container.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brett Edwards whose telephone number is (571)270-1443. The examiner can normally be reached on M-Th 8:30 AM - 7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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08/25/2009